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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A.NO.2446/90

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 12/10 day of October, 1995

Shri Bikram S. Sajwan
Deputy Adviser(Forestry)
Department of Rural Development
Block No.11, 7th Floor
C.G.O.Complex, Lodhi Road
New Delhi.

... Applicant

(By Shri K.K.Khurana, Advocate)

Versus

Union of India, through

1. The Secretary
Department of Environment, Forest & Wildlife
Government of India
Paryavaran Bhawan
C.G.O.Complex
Lodhi Road
New Delhi.
2. Deputy Secretary to the Govt. of India
Department of Environment, Forests & Wildlife
Paryavaran Bhawan
C.G.O.Complex, Lodhi Road
New Delhi.
3. Shri Kishore Rao
c/o Director, Wildlife Institute of India
Dehradun.
4. Shri K.D.Singh
c/o Secretary(Forest)
Government of Arunachal Pradesh
Itanagar-791 111. ... Respondents

(By Shri V.S.R.Krishna, Advocate)

ORDER

HON'BLE SHRI R.K.AHOOJA, MEMBER(A)

The applicant, Shri Bikram S. Sajwan who is a member of the Indian Forest Service has filed this application aggrieved by his supersession vide Ministry of Environment and Forest's order No.45011/1/89-IFS-I(ii) dated 4th September, 1989 whereby two of his juniors, respondents No. 3 and 4 were promoted as Conservators of Forest in preference to him.

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2. The applicant was recruited to the Indian Forest Service (hereafter referred to IFS) in 1976 and allocated to the Union Territories Cadre (hereafter referred to as UT Cadre). In 1989, the UT Cadre was replaced by a newly constituted joint cadre called the Arunachal Pradesh, Goa, Mizoram and Union Territories cadre (hereafter referred as AGMUT Cadre) w.e.f. 10.3.1989. The members of the UT Cadre thereupon became members of the new AGMUT Cadre.

3. The IFS (Cadre) Rules, 1966 provide as follows in respect of the Cadre Controlling Authority of Joint Cadre:

Rule 2(d):- State Government concerned, in relation to a Joint Cadre, mean the Joint Cadre Authority.

Rule 7 (Posting): All appointments to cadre post shall be made

(a) In the case of State Cadre by the State Government and

(b) In the case of a Joint Cadre by the State Government concerned.

4. It is in the context of the aforementioned Rules that the applicant has assailed the impugned order. First, he has questioned the legality and incompetence of the Departmental Promotion Committee (DPC) which considered his promotion case since the said DPC was set up for the erstwhile UT Cadre and not for the newly constituted AGMUT cadre. Secondly, he claims that the procedure adopted by the DPC was arbitrary, discriminatory and unjustified as objectivity was not exercised in comparing **the** merit of the officers considered including the applicant's suitability for promotion. Thirdly, since the inception of the service, there had been no adverse remarks in his ACRs and he always had an excellent record of service. Fourthly, he was promoted to the selection grade for the service only a few months earlier and since the criteria for the promotion to selection

grade and the super time scale as a Conservator of Forests is the same, there being no additional ACRs, the action of the latter DPC superseding him for the post of Conservator of Forests was patently unjustified. Finally, the applicant has also alleged non-application of mind by the appellate authority regarding his representation inspite of the fact that, in a very similar case, the Gauhati Bench of this Tribunal had set-aside the recommendations of the DPC.

5. We have heard the learned counsel on either side at great length. Two main points which were agitated on behalf of the applicants are that the DPC was not properly constituted and hence was not competent to make the recommendation and secondly, that as the applicant was approved only a few months earlier for the selection grade, he could not have been adjudged unsuitable, so soon thereafter, for promotion to the post of Conservator of Forests. As regards the first ground, the learned counsel for the applicant drew our attention to the notification No.11031/35/88-AIS(II)-C dated 10.3.1995 (Annexure - E) whereby the Central Government abolished the UT Cadre and constituted the new AGMUT Cadre, as well as notification No.13013/1/89-AIS(I) dated 03.04.1989 (Annexure 'J') whereby the Central Government constituted the Joint Cadre authority of the Joint IAS, IPS, IFS cadres of AGMUT. It will be seen from the latter notification that the Joint Cadre controlling authority consists of the Chief Secretaries of Arunachal Pradesh, Goa, Mizoram, the Additional Secretary in the Ministry of Home Affairs (Incharge of the UTs Division) and the Joint Secretary in the Ministry of Home Affairs (to act as Convener). The learned counsel argued that the DPC, which is also called the cadre management committee, and which made the recommendations for the post of Conservator of Forests in the UT Cadre consisted of the Secretary to the Government of

India, Ministry of Environment and Forests, Inspector General of Forests and Joint Secretary, UT, Ministry of Home Affairs and the concerned Joint Secretary in the Ministry of Environment & Forests. He asserted that ~~with~~ ^{or} abolition of UT Cadre, the aforesaid DPC also stood abolished and it could no longer validly examine the cases of promotion of the officers of the new AGMUT cadre. On this aspect he also relied on the judgment of the Gauhati Bench of this Tribunal in OA No.140/88 (Shri S.N.Kalita vs. UOI and Others).

6. We have given anxious consideration to this point. There are two important steps in the process of promotion of officers, one the consideration of the case by the DPC and the other the approval thereof by the competent authority or the appointing authority. There is no mention either in the IFS Cadre Rules or in the IFS (Pay) Rules or in the All India Service Act regarding the constitution of a Departmental Promotion Committee. We have also not been shown any notification/circular or order of the Government of India or of the Joint Cadre authority regarding the manner in which such DPCs are to be set up except in the case of promotions into IFS from the State Forest Services. Such a provision however, exists in other Central Services such as the Indian Revenue Service (IRS). Thus Rule 7(3) & (4) of the Indian Revenue Service Rules, 1988 provides that the appointments in the Service to the post of Assistant Commissioners of Income-Tax (Senior Scale) and above shall be made by promotion from amongst the officers in the next lower grade and further that the selection of the officers for promotion shall be made as selection on merit on the recommendations of the Departmental Promotion Committee set up in accordance with the Schedule III. Schedule III of the said rules provides, for instance, that for promotion to the higher grade of

Chief Commissioner of Income-Tax/Directorate General of Income-Tax, the DPC will consist of the Chairman-cum-Member, UPSC who will be the Chairman of the DPC, Secretary, Department of Revenue, Chairman, CBDT and Member CBDT. A similar provision for a DPC is conspicuous by its absence in respect of the All India Services including the IFS. Since there is no specific provision under the rules for a particular constitution of the DPC, we do not find that any irregularity has been committed by the respondents by continuing the same DPC which was constituted when the UT Cadre was still in existence. The learned counsel for the respondents argued that the applicant had in any case not objected to the recommendations of the same DPC when it was a question of grant of selection grade and has now chosen to assail it when he has not been found suitable for promotion to the post of Conservator of Forests. In view of what we have stated earlier, there is not need to examine this argument further.

7. The change in the situation which has come about with the above mentioned UT Cadre replacing the AGMUT Cadre is that the Appointing Authority in the case of the applicant has changed. After coming into being of the AGMUT Cadre, his appointing authority the one whose composition has been mentioned earlier. In the instant case, the appointment to the post of Conservator of Forests has not made by the Joint Cadre Authority but by the Ministry of Forests and Environment. However, this is not the case of the applicant.

8. The applicant has relied on his selection and appointment to the selection grade of the service only a few months prior to the selection for the post of Conservator of Forests to establish that since there was no change in the circumstances, his

supersession was not justified. The learned counsel for the applicant pointed out that the applicant had been shown senior to respondent No. 3 & 4 in the orders issued for the grant of selection grade on 24.7.1989 which shows that respondent No. 3 & 4 had not been graded higher than the applicant and therefore, there should not have been any question of their superceding the applicant on the basis of the superior grading.

9. We find that this argument does not stand scrutiny. In the All India Services (AIS), the inter-se seniority does not undergo a change irrespective of whether one is ~~promoted~~ or not. Hence, when both the parties are selected, they are given appointment in order of their seniority. Thus if the number of vacancies justified the selection of the applicant as well as the respondents No. 3 & 4 as happened in the case of the selection grade, the respondent No. 3 & 4 would be bound to be shown lower than the applicant, and the placement in the order of seniority would not indicate their relative gradings. The same ranking would continue as and when the applicant makes it to the post of Conservator of Forests and he would be ~~placed~~ senior to Respondents No. 3 & 4.

10. Even though, the critaria of selection is the same for the posts in selection grade and above, the two DPCs cannot be compared unless the records and circumstances in both the cases are similar in terms of number of vacancies, the period for which the annual reports are to be taken into account, and the number of officers considered for the same. A cursory reading of the orders relating to grant of selection grade as well as promotion to the rank of Conservator of Forest issued on 24.7.1989 and 4.9.1989 respectively, shows a difference in vacancies and a difference in the names of the officers. We therefore, do not

find that the argument advanced by the learned counsel for the applicant regarding ~~complementarity~~ ^{of} ~~L~~ of the two selections, can be sustained.

11. The learned counsel for the applicant has also relied on the Judgment of the Gauhati Bench of this Tribunal in OA No.140(G)/88 decided on 31.5.1990 in Shri S.N.Kalita Vs. Union of India & Others reproduced at Annexure 'N'. In that case, the Tribunal had set-aside the selections made by the DPC for the reason amongst others that the Selection Committee was not properly constituted. The problem arose in that case because instead of Inspector General of Forests who was designated as a Member of the Selection Committee, the Additional Inspector General of Forests had acted in his place. What was assailed in that case was not the constitution of the Selection Committee on the basis of a change of cadre authority but the replacement of a member without due authority. This is not the allegation in the present case on hand and hence Shri S.N.Kalita's case does not help the present applicant.

12. The learned counsel argued before us that the applicant performance had been very high in as much as he had been recommended for premature promotion in the Senior Time Scale and was latter given prize postings, and when sent on training abroad he was assessed the best overseas student and awarded a prize for his outstanding performance. We have no reason to doubt these claims advanced regarding the performance of the applicant. However, when a DPC examines a number of officers on selection basis, it has to prefer the 'Outstanding' to the 'Verygood', in accordance with the instructions on the subject. The good work

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(8)

done by the applicant does not automatically entitle him to promotion in preference to those who have done better where the critaria is that of selection.

13. In the totality of circumstances as portrayed in the analysis above, we come to the conclusion that the case of the applicant cannot succeed. Accordingly, the application is dismissed. Parties will bear their own costs.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER(A)

/RAO/


(A.V. HARIDASAN)
VICE-CHAIRMAN(J)